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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Gabriel Prado, an individual; and Sandy)
10 Kreiman, an individual)

11 Plaintiffs,)

12 vs.)

13 Cunningham & Associates Inc., an)
14 Arizona corporation,)

15 Defendant.)

16 Cunningham & Associates Inc., an)
17 Arizona corporation,)

18 Counterclaimant,)

19 vs.)

20 Gabriel Prado, an individual,)

21 Counterdefendant.)

22 Cunningham & Associates Inc., an)
23 Arizona corporation,)

24 Third-Party Plaintiff,)

25 vs.)

26 Auction Nation LLC, an Arizona limited)
27 liability company,)

28 Third-Party Defendant.)

No. CV-11-00371-PHX-GMS

ORDER

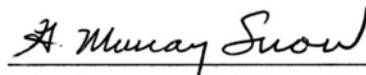
1 Auction Nation LLC, an Arizona limited)
liability company,)
2)
Counterclaimant,)
3)
vs.)
4)
Cunningham & Associates Inc., an)
5 Arizona corporation.)
6)
Counterdefendant.)
7 _____)

8 Pending before the Court is the Motion for Judgment on the Pleadings (Doc. 19) filed by
9 Third-Party Plaintiff/Third-Party Counterdefendant Cunningham and Associates, Inc.
10 (“Cunningham”). Federal Rule of Civil Procedure 12(d) states that “[i]f, on a motion under . . .
11 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must
12 be treated as one for summary judgment under Rule 56.” Because Cunningham’s 12(c) motion relies
13 on matters outside the pleadings, namely that Auction Nation granted Cunningham an implied
14 nonexclusive license, the Court must treat Cunningham’s motion as a motion for summary
15 judgment, even though Auction Nation has conceded in its Response that it granted such a license.
16 (Doc. 19).

17 Rule 12(d) provides that “[a]ll parties must be given a reasonable opportunity to present all
18 the material that is pertinent to the motion.” Accordingly,

19 **IT IS THEREFORE ORDERED** that Third-Party Defendant/Third-Party Counterclaimant
20 Auction Nation shall have **15 days from the date of this Order** within which to either file
21 “pertinent” supplemental material or present its position on the Court’s application of Rule 12(d).
22 Third-Party Plaintiff/Third-Party Counterdefendant Cunningham shall have **15 days** from the date
23 that Auction Nation files its brief within which to respond and file any relevant supplemental
24 material.

25 DATED this 9th day of June, 2011.

26 
27 _____
G. Murray Snow
28 United States District Judge